Nos. 09-579, 09-580

Supreme Court, U.S.
FILED
FEB 12 2010
OFFICE OF THE CLERK

In The
Supreme Court of the United States

SHELDON PETERS WOLFCHILD, et al.,

Petitioners,

vs.

UNITED STATES, et al.,

Respondents.

HARLEY D. ZEPHIER, SR., et al.,

Petitioners,

vs.

UNITED STATES, et al.,

Respondents.

On Petitions For Writs Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF RESPONDENTS IN SUPPORT OF PETITIONS FOR WRITS OF CERTIORARI

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ISSUES PRESENTED

These Respondents support the Petitions of *Sheldon Peters Wolfchild, et al. v. United States, et al.*, Docket No. 09-579 (the "*Wolfchild* Petition"), and *Harley D. Zephier, Sr., et al. v. United States, et al.*, Docket No. 09-580 (the "*Zephier* Petition") for Writs of Certiorari. Accordingly, the following "Statement of Issues Presented" derives from the "Questions Presented" raised in the *Wolfchild* and *Zephier* Petitions. Respondents hereby join in both the *Wolfchild* and the *Zephier* Petitions and adopt by reference, herein, the entirety of said Petitions and supporting material.

This case presents three issues which are of fundamental importance in Indian jurisprudence, and upon which the Federal Circuit's decision departs from the established precedent of this Court and of other Federal Courts:

1. Did the Appropriations Acts of 1888, 1889, and 1890 create a trust for the benefit of the 1886 Mdewakanton Sioux and their descendents (the "1986 Mdewakanton Sioux")?

2. By the passage of the 1980 Act, did Congress intend to terminate that trust?

3. If Congress did so intend, did the termination of the trust constitute a "taking" without just compensation in violation of the Fifth Amendment of the United States Constitution?

LIST OF PARTIES

A list of parties is attached hereto as Appendix C.

CORPORATE DISCLOSURE STATEMENT

These Plaintiffs-Respondents are not and do not represent a nongovernmental corporation.

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OPINION BELOW

This Responsive Brief is submitted by 88 plaintiff heirs of the Loyal Mdewakantons ("Plaintiff-Respondents" or "these Respondents") in support of the Petition for Writ of Certiorari of *Sheldon Peters Wolfchild, et al. v. United States, et al.*, Docket No. 09-579, and the Petition for Writ of Certiorari of *Harley D. Zephier, Sr., et al. v. United States, et al.*, Docket No. 09-580. Respondents hereby join in the Petitions and in all of the arguments made by said Petitions.

These Plaintiff-Respondents accept and support the statements of the "Opinion Below" as referenced in those Petitions.

STATEMENT OF JURISDICTION

These Respondents accept and support the "Statements of Jurisdiction" as set forth in the above-identified Petitions.

STATUTORY PROVISIONS INVOLVED

Pertinent provisions of the February 16, 1863 Act, 12 Stat. 654, Preamble in §§ 1 through 9; March 3, 1863 Act, 12 Stat. 819, Preamble in §§ 1 through 6; 1888, 1889 and 1890 Appropriation Acts: Act of June 29, 1888, 25 Stat. 217 at 228; Act of March 2, 1889, 25 Stat. 980 at 992; Act of August 19, 1890, 26 Stat. 336 at 349; relevant provisions of the original Indian

Reorganization Act of 1934, as amended, 25 U.S.C. § 462, 463, 465 and 479, Indian Reorganization Act of 1934 (as reprinted in *Wolfchild* Petition Appendix at 159-160); and the Act of December 1980, Pub. L. 9-557, 94 Stat. 3262.

STATEMENT OF THE CASE

INTRODUCTION

This case involves the misapplication of settled principles of Indian trust law by the Federal Circuit, resulting in the "taking" of approximately one thousand acres of prime land, which, because of the institution of Indian gaming, is worth millions of dollars in annual revenues, from the descendents of the loyal Mdewakanton Sioux Indian people who risked their lives, and forfeited their property and tribal relationships, to save whites during the Sioux Uprising of 1862 in Minnesota.

FACTUAL BACKGROUND

The Appropriation Acts[1] were intended to compensate those Mdewakanton Sioux who risked their lives to rescue whites during the Minnesota Uprising of 1862, and who thereby completely alienated themselves from their own Sioux tribal communities and were left to fend for themselves in a white man's

[1] *Wolfchild* Petition, App. 154-156.

culture. During the Uprising of 1862, some of the Sioux had remained loyal to the United States Government. These Sioux people were not only loyal to the Government, but they risked their lives by rescuing white settlers. By these acts of courage, they lost not only their homes and property, but they severed their relationships with their own people. Congress recognized that, if they returned to their own tribes, they would be slaughtered. Recognizing their great sacrifice, in 1863, in the same legislation in which it abrogated the Sioux treaties, forfeited the Sioux reservations and terminated their annuities, Congress authorized the Department of the Interior to set apart up to eighty acres of public lands for each of the loyal Mdewakanton Sioux, to be set apart, or allotted, to each of the loyal Sioux "and their heirs forever." It further provided that the land " . . . shall not be subject to any tax, forfeiture, or sale, by process of law, and shall not be alienated or devised, except by the consent of the President."[2] When, by 1888, the Secretary had not allocated those acreages, and recognizing that, when it forfeited the treaties and annuities, Congress had rendered the loyal Mdewakanton Sioux homeless and penniless, Congress, in the Appropriation Acts, appropriated funds and required the Secretary to use those funds to buy land, cattle, horses and implements for the loyal Mdewakanton Sioux. What is especially significant for our case, Congress mandated that each loyal

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[2] 12 Stat. 652, *Wolfchild* Petition, App. 8.

Mdewakanton Sioux was to receive as close to an equal benefit from the land as practicable. To further insure that the loyal Mdewakanton Sioux would benefit from this appropriation, to further demonstrate Congress's intent to benefit all of the loyal Mdewakanton Sioux, and to guard against the inaction of the Department of Interior, Congress mandated that the money be used to support both full and half blooded Indians, and that the funds carry over from year to year, if they were not all spent in the fiscal year in which they were appropriated. The Appropriation Acts were enacted to provide a substitute for the benefits which the 1886 Mdewakanton Sioux lost because they have give up their "vested" tribal status, which is a significant factor, in light of the fact that the Federal Circuit held that they had no "vested" interest in the lands purchased with those appropriations.

REASONS FOR GRANTING PETITIONS

As expressed in the Petitioners' arguments, in which these Respondents join, and supported by the following Respondents' arguments, in order to reach its result the Federal Circuit Court of Appeals misapplied the precedent of this and other Federal Courts as follows:

(1) The Federal Circuit departed from the precedent of this Court, and other Federal Courts, in holding that the Authorization Acts did not create a trust

relationship, and did not confer upon the 1886 Mdewakanton Sioux, as a collective group, a vested right to share in the benefits of the 1886 Lands, thereby depriving the 1886 Mdewakanton Sioux of a remedy for a deprivation of their statutorily conferred rights.

(2) The Federal Circuit's conclusion that it was the intention of Congress, by passage of the 1980 Act, to terminate the existing trust, and to thereby divest ninety percent (90%) of the descendents of the 1886 Mdewakanton Sioux of their interest in the 1886 Lands, was clearly in error, and ignored long-standing Indian treaty and trust law.

(3) If it was the intention of Congress, by the passage of the 1980 Act, to terminate the existing trust, the termination of the trust, and the divestiture of ninety percent of the descendents of the 1886 Mdewakanton Sioux of their interest in the 1886 Lands, under the established standards of the Court, constituted a taking without just compensation in violation of the Fifth Amendment of the United States Constitution.

These Respondents therefore support Petitioners' prayer for review and reversal of the Federal Circuit's opinion, as argued more fully below.

I. The Federal Circuit Departed from the Precedent of this Court, and other Federal Courts, in Holding that the Authorization Acts Did Not Create a Trust Relationship, and Did Not Confer Upon the 1886 Mdewakanton Sioux, as a Collective Group, a Vested Right to Share in the Benefits of the 1886 Lands, thereby Depriving the 1886 Mdewakanton Sioux of a Remedy for a Deprivation of their Statutorily Conferred Rights.

The decision of the Federal Circuit erroneously applied the principles established by the decisions of this Court and of the various Circuits relating to the creation of statutory trusts for Native American people, thus creating confusion in that area of the law, and depriving the 1886 Mdewakanton Sioux of a vested statutory benefit, worth billions of dollars, without any compensation.

To determine Congressional intent, the Authorization Acts must be analyzed in historical context. The Federal Circuit failed to properly undertake that analysis. As a result, the Federal Circuit ignored the intent of Congress, made apparent over the course of many years, to do justice to the 1886 Mdewakanton Sioux and their descendents.

Those Acts were intended to compensate those Mdewakanton Sioux, and their descendents, who risked their lives to rescue whites during the Uprising of 1862, and who thereby completely alienated themselves from their own Sioux tribal communities

and were left to fend for themselves in a white man's culture. They were intended as a substitute for the benefits they lost by forfeiting their tribal status. By these acts of courage, they lost not only their homes and property, but they severed their relationships with their own people. Congress recognized that, if they returned to their own tribes, they would be slaughtered. Recognizing their great sacrifice, in 1863, in the same legislation in which it abrogated the Sioux treaties, forfeited the Sioux reservations and terminated their annuities, Congress authorized the Department of the Interior to set apart up to eighty acres of public lands for each of the loyal Mdewakanton Sioux, to be set apart, or allotted, to each of the loyal Sioux "and their heirs forever."[3] This obviously demonstrates an intention to benefit the loyal Mdewakanton Sioux with the fruits of allotted land, on a permanent basis, accruing to their descendents "and their heirs forever." It further provided that the land " . . . shall not be subject to any tax, forfeiture, or sale, by process of law, and shall not be alienated or devised, except by the consent of the President." This demonstrates an intention to create a trust relationship, to protect the loyal Mdewakanton Sioux from those who would take advantage of them. When, by 1888, the Secretary had not allocated those acreages, and recognizing that, when it forfeited the treaties and annuities, Congress had rendered the loyal Mdewakanton Sioux homeless

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[3] 12 Stat. 652, *Wolfchild* Petition, App. 8.

and penniless, Congress appropriated funds, and required the Secretary to use those funds, to buy land, cattle, horses and implements for the benefit of the loyal Mdewakanton Sioux.[4] The Federal Circuit failed to read the Appropriation Acts in the context of their legislative precursor, the 1863 Bill. What is especially significant for our case, Congress, in the Appropriation Acts, mandated that each loyal Mdewakanton Sioux was to receive as close to an equal amount, in value, from this appropriation, as practicable. Congress thereby clearly expressed its intention that the Department use the land, or manage the land, for the equal, collective benefit of all the loyal Mdewakanton Sioux, which is as clear an invocation of trust status as possible, without the express use of the term "trust." To further insure that the loyal Mdewakanton Sioux would benefit from this appropriation, and further demonstrating Congress's intent to benefit all of the loyal Mdewakanton Sioux, and to guard against the inaction of the Department of Interior, Congress mandated that the money be used to support both full and half blooded Indians, and that the funds carry over from year to year, if they were not all spent in the fiscal year in which they were appropriated. The Appropriation Acts were enacted to provide a substitute for the benefits which the 1886 Mdewakanton Sioux lost because they gave up their tribal status to rescue whites – as a substitute for

[4] *Wolfchild* Petition, App. 154-156.

tribal "trust" status, carrying all of its benefits and protections.

The Federal Circuit's conclusion that "nothing in the legislative history of the three provisions at issue . . . indicates that they were designed to create a trust relationship . . . " is thus simply erroneous. As indicated, the acknowledged precursor of the Appropriation Acts was the 1863 Bill. In fact, the Appropriation Acts were enacted, in part, to remedy the failure of the Secretary of the Interior to set apart the lands called for by the 1863 Bill. This was certainly an important part of the legislative history of the Appropriation Acts. That precursor Bill specifically protected that land against alienation and encumbrance, and provided that the land " . . . shall be an inheritance to said Indians and their heirs forever." The intent of Congress, in passing the Appropriation Acts, certainly must be analyzed in the context of this precursor Bill, a Bill which was not implemented by the Department, and which non-implementation the Appropriation Acts were intended to correct. Had the Secretary purchased the land, pursuant to the 1863 Bill, as the Secretary did, pursuant to the Appropriation Acts, it certainly cannot be questioned that it was the clear intention of Congress to create a trust by the 1863 Bill, even though neither of the Bills explicitly refer to a "trust."

Further, in 1886, Congress again appropriated funds for the purchase of lands for the loyal Mdewakanton Sioux. The Secretary purchased lands and transferred those lands outright to various loyal

Mdewakanton Sioux in fee simple ownership. The Department discontinued that process, when the loyal Mdewakanton Sioux sold or abandoned their lands. This led to the Appropriation Acts.[5] This history supports the conclusion that Congress intended to create what is referred to in the general practice of law as a "spendthrift" trust, one that is designed to be protected from alienation or encumbrance, and to continue to be held for many years for the benefit of the beneficiaries.

There is no question that the Appropriation Acts expressly contained all of the elements of a trust created for the benefit of the 1886 Mdewakanton Sioux. A trust arises out of the nature of the relationships created by the Acts. The Acts authorized the Secretary of the Interior to purchase lands, and mandated that the Department of the Interior use the lands for the benefit of the 1886 Mdewakanton Sioux. That is the classic language for the creation of a trust relationship, the beneficiaries of which were the collective group known as the 1886 Mdewakanton Sioux. However, Congress went even further. It also required that the Department of the Interior, to the degree practicable, use (or manage) the land so that all of the 1886 Mdewakanton Sioux would benefit equally from the appropriation used to purchase the land. To argue that these Acts created anything but

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[5] *Wolfchild, et al. v. United States, et al.*, 559 F.3d 1228, 1233 (Fed. Cir. 2009).

an express trust relationship is to ignore the express language used by Congress. To argue that the Acts did not give rise to any substantive rights in the 1886 Mdewakanton Sioux, either individually or as a collective group, is to ignore the consistent mandates of Congress and the consistent rulings of the Courts, which have given Native American people, who have suffered deprivations arising out of treaty and statutory violations, a remedy in the Court of Claims. There can be no question that, had the Secretary, after purchasing the lands, decided to open them up to white settlers, the 1886 Mdewakanton Sioux would have had a cause of action against the Secretary for breach of his obligations created by the Acts. It is clear that the 1886 Mdewakanton Sioux were granted enforceable, substantive rights and they were the beneficiaries of a statutorily created trust.

The fact that the Secretary had the discretion as to "how" to use the purchased land for the benefit of the 1886 Mdewakanton Sioux, the fact that the Secretary was given "minimal direction" as to how to manage the land for their benefit, does not affect the question of "whether" it should be used for that purpose. This is what some courts have referred to as a "bare" or a "limited" trust. It did not provide management instructions for the Secretary. The Secretary had a great deal of discretion as to "how" to manage, or to use, the trust lands for the benefit of the 1886 Mdewakanton Sioux. However, the Secretary did not have any discretion to completely divest the 1886 Mdewakanton Sioux of their interest in the

lands. That is, in essence, what the Government argues to be the effect of the Bill which the Department proposed to Congress in 1980 – that the lands should be taken from 90% of the descendents of the 1886 Mdewakanton Sioux, and given over to 10% of those descendents, as well as to some who were not even descendents of the 1886 Mdewakanton Sioux, a fact which the Department apparently did not reveal to Congress in the process of proposing the legislation.

The concept of the "bare" or "limited" trust was the subject of this Court's decision in the case of *United States v. Mitchell*, 463 U.S. 206, 103 S.Ct. 2961 (1983) ("*Mitchell II*"), which the Federal Circuit did not properly apply. This Court, in *Mitchell II*, held that the General Allotment Act, although it does not contain detailed directives as to management, created a "limited" trust relationship that "prevents improvident alienation of the allotted lands." The Appropriation Acts, to correct prior problems with outright transfer of land arising out of its alienation or destruction, created a limited trust to prevent improvident alienation of the lands allotted to the 1886 Mdewakanton Sioux. For ninety years, the trust arrangement fulfilled the Congressional purpose – it prevented the alienation of the land. Then, in 1980, just at the time when the 1886 Mdewakanton Sioux, because of the Indian Gaming Act, were on the cusp

of realizing some true benefit from the 1886 lands,[6] the very trustee appointed by Congress to protect the 1886 Mdewakanton Sioux from the "improvident alienation" of their lands, the Secretary of the Department of Interior, according to the Government's argument, violated that trust. The Secretary proposed a Bill that "alienated" the land. The Bill divested 90% of the intended beneficiaries of any and all interest in, or benefit from, the 1886 lands. The Bill did not simply call for the "management" of the land, as alleged in *Mitchell II*. It did not simply result in the more equitable allocation of royalty revenues, as in *United States v. Jim*.[7] According to the Government's construction, it resulted in an outright "taking" of a vested right to the benefits of the 1886 lands without just compensation, which, as will be argued hereafter, is in specific violation of the Fifth Amendment of the United States Constitution. *United States v. Sioux Nation of Indians*, 448 U.S. 371, 100 S.Ct. 2716 (1980).

The Federal Circuit decision thus confuses the question of the "existence" of a trust, with the question of the "type of trust" that Congress intended to create. This Court, in *United States v. Mitchell*, 445 U.S. 535, 100 S.Ct. 1349, 63 L.Ed.2d 607 (1980) (*"Mitchell I"*), and *United States v. Mitchell*, 463 U.S. 206, 103 S.Ct. 2961, 77 L.Ed.2d 580 (1983) (*Mitchell II*), and *United States v. White Mountain Apache*

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[6] *Wolfchild, supra*, at 1235.

[7] 409 U.S. 80, 93 S.Ct. 261 (1972).

Tribe, 537 U.S. 465, 123 S.Ct. 1126 (2003), clarified the difference between a "limited" or "bare" trust, and a "conventional" trust, which has all of the hallmarks of a fiduciary relationship. A "bare" trust is one in which the statute gave the United States no "functional obligations", such as managing timber, for the benefit of the beneficiaries. A "bare" trust is one in which, for example, the Department has no managerial responsibilities but which exists merely to "prevent alienation of the land" and to guarantee immunity from state taxes. Because Congress did not assign any "managerial" duties or "directions" to the Department, the Federal Circuit held that the land was not held in trust. However, there was no question that Congress intended a trust, if only a "bare" or a "limited" trust, a trust which exists to prevent the alienation of the land. A "bare" trust is still a trust, imposing a duty upon the trustee to "prevent alienation of the land." In this case, the trustee violated that duty. The trustee "alienated" the land, taking it away from 90% of its intended beneficiaries, and granting an interest in the land to beneficiaries who are not proper beneficiaries of the land.

The Federal Circuit ignores the fact that the Secretary actually purchased land that was to be used for the equal benefit of the 1886 Mdewakanton Sioux. Once the land was purchased, a general "appropriation" provision becomes a "trust" provision. The legal title to that land was in the United States. There was a trust "res" or "corpus." This was not a case where the Secretary was given authority to

expend funds generally for the welfare of the Indians, or to buy only implements, livestock or seed. The Secretary was given the authority to buy land, and if the Secretary exercised that authority and bought land, the statutes created a statutory duty, in the Secretary, to use it for the equal benefit of the 1886 Mdewakanton Sioux. The Secretary had the discretion as to "how" to use that land for the equal benefit of the 1886 Mdewakanton Sioux, but the Secretary did not have the discretion "whether" to use it for their equal benefit. To argue that they had no collective "vested" interest in the land is therefore clearly erroneous.

It is also significant that the Federal Circuit's opinion summarily dismissed the repeated provisions of the Appropriation Acts which expressly mandated that if the Secretary purchased land, the Secretary was required to assure that " . . . all of said money which is to be expended for lands shall be so expended that each of the Indians shall receive, as nearly as practicable, an equal amount in the value of the appropriation." This statutory mandate was basically ignored because there is no way it can be considered as imposing anything other than a fiduciary obligation on the Secretary of the Interior to use the land so that each of the 1886 Mdewakanton Sioux receive an equal benefit from the land. A persuasive argument can be made that, over the years of the application of the statute, the mandate was not carried out. Allowing a small number of 1886 Mdewakanton Sioux to occupy the land certainly cannot be said to provide for the equal benefit of all. In 1980, the

Secretary of the Interior had an opportunity to correct that injustice. The Secretary could have proposed to Congress that the land be granted, in trust, to the three post-1934 tribal communities on the condition they open their membership up to any of the descendents of the 1886 Mdewakanton Sioux who could prove their status as descendents, and on the condition that the income from the 1886 lands not be distributed among members who were not 1886 Mdewakanton Sioux. Because the Secretary did not so propose, and because Congress did not enact such a condition upon the grant, according to the Government's argument, 90% of the 1886 Mdewakanton Sioux were completely deprived of the benefit of the 1886 lands, which Congress had specifically mandated be used and managed for the equal benefit of all 1886 Mdewakanton Sioux.

The Federal Court refers to the "minimal directives" of the Appropriation Acts, in support of a conclusion that there was no intent to create a trust. Whether the directives are "minimal" is irrelevant. The important thing is that the mandate of the Acts is direct, express and unequivocal. The Secretary is to use the lands for the equal benefit of all of the 1886 Mdewakanton Sioux. Repeated in two of the three Appropriation Acts is the requirement that the Secretary, as nearly as practicable, see to it that each of the beneficiaries receives an equal amount in benefit from the lands purchased. As indicated, that

statutory injunction is repeated in both the 1889 and the 1890 Appropriation Acts.[8] They clearly express a congressional intent that, if the Secretary decides to use, or manage, the lands for the collective benefit of the 1886 Mdewakanton Sioux and their descendents, the Secretary must do so in a manner in which they will all share equally in its benefits. If the Secretary had elected to use the land for the collective benefit of the 1886 Mdewakanton Sioux, for example, by renting the land, he was expressly required, by the Appropriation Acts, to distribute those proceeds equally to the beneficiaries, the 1886 Mdewakanton Sioux.

In its effort to support its conclusions, the Federal Circuit attempts to minimize the "duties" created by the Appropriation Acts. As indicated, the Court refers to the "minimal directives" of the Appropriation Acts. In an apparent acknowledgement that the Secretary was given certain mandates with respect to the land purchased, the Federal Circuit refers to them as "statutory use restrictions" rather than fiduciary responsibilities. The Federal Circuit also characterized this as a "change in the identity of the beneficiaries," and held that a change in the identity of the beneficiaries does not constitute a taking.[9] To characterize the exclusion of 90% of the statutorily intended beneficiaries, and the inclusion of a number

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[8] *Wolfchild* Petition, App. 154-156.

[9] *Wolfchild*, *supra*, at 1258.

of beneficiaries who were not authorized by statute, as a "change in identity of the beneficiaries," as argued by the Government, especially in light of the statutory mandate that the beneficiaries be treated equally, simply defies logic. As will be argued hereafter, it was a "taking" completely without compensation.

No matter how the language is parsed, there is no avoiding the conclusion that Congress directed the Secretary to use the land in such a fashion so that each of the 1886 Mdewakanton Sioux receive "an equal amount of value" from the land in question, and that the Secretary violated that mandate.

The Federal Circuit further concludes that these beneficiaries had an "expectation of benefit," but no "vested rights" in the property. It is the position of Petitioners that the 1886 Mdewakanton Sioux, as a collective group, had a "vested" interest in the 1886 lands. There is no question that individual 1886 Mdewakanton Sioux Indians were not vested with ownership, in the sense of a fee simple interest. However, the 1886 Mdewakanton Sioux, as a group, were given a "fixed and immediate right of present or future enjoyment" of the lands. Black's Law Dictionary. As indicated, if the Secretary had decided to open the 1886 lands to white settlers, there is no question that the 1886 Mdewakanton Sioux would have a claim against the Secretary for violation of his statutory duties.

The Federal Circuit misapplied the decision of this Court in *United States v. Jim,* 409 U.S. 80, 93 S.Ct. 261 (1972). The Federal Circuit cited this case for the proposition that "Because that arrangement did not give vested rights to the land to any of the descendants of the 1886 Mdewakantons, Congress was free to alter the ownership status of the land to create trusts for the three communities." In the first place, the Federal Circuit was incorrect in its conclusion that the Appropriation Acts did not give any vested rights to the descendents of the 1886 Mdewakanton Sioux. In Section 1 of the Section-by-Section Analysis of the Act of 1980, Congress declared: " . . . certain lands totaling approximately 1,000 acres situated in the State of Minnesota were acquired by the United States under three separate Acts of Congress for the use and benefit of certain Mdewakanton Sioux Indians and their descendents. . . ."[10] By Congress's own statement, the Appropriation Acts gave a vested interest, as beneficiaries of the statutory trust, to the 1886 Mdewakanton Sioux and their descendents. The Court cited the above case as an example of an "alteration of ownership status of the land" which would not give rise to a cause of action. The case of *United States v. Jim*, however, dealt with a federal statute which amended a previous federal statute. The previous statute provided that a certain percentage of the mineral royalties from tribal land

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[10] Report, App. 1.

should be used for the health and general welfare of the Navajo of a certain county. The amended statute expanded the pool of beneficiaries, so that the royalties would be used to benefit the Navajo on the entire reservation. This is very different from an Act that completely divests 90% of the beneficiaries of the land of any interest in or any benefit from the land, the benefits from which, because of the gambling revenues, are worth a considerable amount of money. The Court, in *United States v. Jim*, specifically pointed out that Congress had not deprived the Navajo of the benefit of the royalties, but had simply reallocated them in a more equitable manner. The Court was careful to qualify its decision: "We intimate no view as to the rights a tribe might have if Congress were to deprive it of the value of mineral royalties generated by tribal lands."[11]

The subsequent words and actions of the Department of the Interior, carrying out the mandates of the Appropriation Acts, up until 1980, further support the conclusion that that the Department thought that Congress had intended a limited trust relationship. As indicated, the very reason the Secretary of the Interior adopted the assignment system was to use the land for the benefit of the 1886 Mdewakanton Sioux without allowing them to alienate or encumber it. The title to the land was held by the United States

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[11] *United States v. Jim*, 409 U.S. 80, fn.3, 93 S.Ct. 261 (1972).

because the Department of the Interior, based upon past experience with granting fee simple title, feared that sale or the destruction of the property if the United States did not remain the legal owner and in control of the use of the property. That is in the nature of a "spendthrift" trust, where the trustee retains legal title in order to protect the beneficiary from his own actions endangering his continued benefit from the land. The Federal Circuit admits that the Interior Department officials repeatedly characterized the 1886 lands as being held in trust.[12] The Department further treated the land as if it were held in trust. When it was necessary sell a parcel of the 1886 lands, the Bill authorizing sale required the written consent of all of the beneficiaries residing in the County. Act of Feb. 25, 1901, 31 Stat. 805, 806. When the land was not under assignment, it was leased, and the proceeds were held in accounts for the benefit of the lineal descendents of the 1886 Mdewakanton Sioux.[13] Even the constitution and bylaws of the three tribal communities recognized the trust status, creating two classes of membership, one of which consisted of the descendants of the 1886 Mdewakanton Sioux "who had exclusive rights to the benefits of the 1886 lands."[14]

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[12] *Wolfchild*, *supra*, at 1241.

[13] Plaintiff's Exhibit 29, at 5-6.

[14] H.R. Rep. No. 96-1409 (1980), App. 2.

II. Whether the Federal Court's Conclusion that it Was the Intention of Congress, by Passage of the 1980 Act, to Terminate the Existing Trust, and to thereby Divest Ninety Percent (90%) of the Descendents of the 1886 Mdewakanton Sioux of their Interest in the 1886 Lands, Was Clearly in Error, and Ignored Long-Standing Indian Treaty and Trust Law.

The Federal Circuit was required to interpret the 1980 Act in a manner that would render its application clearly constitutional. *Edmond v. United States*, 520 U.S. 651, 658, 117 S.Ct. 1573 (1997). As Justice Holmes stated: "A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score." *United States v. Jin Fuey Moy,* 241 U.S. 394, 401, 36 S.Ct. 658, 659, 60 L.Ed. 1061 (1916); *Almendarez-Torres v. United States*, 523 U.S. 224, 238, 118 S.Ct. 1219 (1998).

As will be argued below, the Federal Circuit's interpretation of the 1980 Act results in a "taking" without just compensation, in violation of the Fifth Amendment of the United States Constitution. The question is: can the Act be interpreted in a manner so as to render it constitutional? Petitioner believes that it can.

The Act of 1980 provides:

> " . . . all right, title and interest of the United States in those lands . . . which were

> acquired and are now held by the United States for the use or benefit of certain Mdewakanton Sioux Indians under . . . (the Appropriation Acts), are hereby declared to hereafter be held by the United States – (1) . . . 258.25 acres . . . in trust for the Shakopee Mdewakanton Sioux Community . . . ; (2) . . . 572.5 aces . . . in trust for the Lower Sioux Indian Community . . . ; and (3) . . . 120 acres . . . in trust for the Prairie Island Indian Community. . . ."[15]

It is obvious that the Act does not change the status of the United States as trustee over the 1886 lands. As concluded by the Federal Circuit, 95% of the enrolled members of the three communities are 1886 Mdewakanton Sioux or their descendents, and were thus proper beneficiaries of the Appropriation Acts. The problem is that the enrolled tribal membership of the three tribes excludes 90% of the 1886 Mdewakanton Sioux, a fact of which there is no indication Congress was aware. The question is: can the Act be interpreted to require the United States, as Trustee, to include those 1886 Mdewakanton Sioux, who are excluded from tribal membership in the three tribes, as continuing beneficiaries of the Trust. The Act does not expressly terminate the benefits of those 1886 Mdewakanton Sioux who were not members of those three tribes. Congressional intent to authorize the extinguishment of trust status must

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[15] *Wolfchild* Petition, App. 154-156.

be "plain and unambiguous," *United States ex rel. Hualpai Indians v. Santa Fe Pacific R. Co., supra*, 314 U.S., at 346, 62 S.Ct., at 251 (1941). It either "must be expressed on the face of the Act or be clear from the surrounding circumstances and legislative history. *Mattz v. Arnett*, 412 U.S. 481, 505, 93 S.Ct. 2245, 2258, 37 L.Ed.2d 92 (1973)." *Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 105 S.Ct. 2587 (1985).

Such intent certainly is not plain and unambiguous in the language of the Act. The Act merely provides that the 1886 lands, which had been held by the United States in trust for the 1886 Mdewakanton Sioux, were to be held in trust for the three tribal communities, 95% of whose members were 1886 Mdewakanton Sioux. It does not state that the interest of the remaining 1886 Mdewakanton Sioux, 90% of the total number of 1886 Mdewakanton Sioux, should be extinguished and terminated. The purpose of the Bill, as stated in the Committee Report, was to eliminate the "checkerboard pattern of land" whereby land assigned to 1886 lands were interspersed with other tribal land, diminishing the effectiveness of overall land management.[16] Further, the 1886 lands were either assigned to the 1886 Mdewakanton Sioux, or had to remain available for assignment by the Department of the Interior. This prevented the encumbering of the land, or the long-term lease of the

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[16] H.R. Rep. No. 96-1409 (1980), App. 2.

land, for the purpose of effective commercial development. Transferring the 1886 lands to the control of the tribes, however, under the overall trusteeship of the United States, would allow the commercial development of the land for the enhanced benefit of the beneficiaries. As stated by the Director of the Office of Management and Budget, this was viewed a "technical change in status ... to facilitate community development on the reservations."[17] In fact, it enabled the Shakopee tribe to develop a very lucrative casino gaming operation on the land. This very beneficial purpose of the legislation, however, can still be accomplished without divesting the 1886 Mdewakanton Sioux of the benefits of the land. It has to do with the unified management of the land, not with the identity of the beneficiaries. As indicated, the United States is the continuing Trustee of those lands. It certainly is not inconsistent with the terms, or the purpose of the Act of 1980, to interpret that Act consistent with the United States Constitution, to afford a continuing beneficial interest in the 1886 lands under the Trusteeship of the United States, to the 1886 Mdewakanton Sioux who are not enrolled members of the tribes and who, in fact, have been purposely excluded from membership in the tribes. See *Smith v. Babbitt*, 100 F.3d 556 (8th Cir. 1996). It would require that some arrangement must be negotiated between the United States, as Trustee, for the benefit of the 1886 Mdewakanton Sioux who are not enrolled

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[17] *Id.*

members of the tribes, and the tribes, as to the amount of net proceeds from the 1886 lands which should be made available for payment by the United States to the 1886 Mdewakanton Sioux who are not enrolled members of the tribes, taking into account multiple factors, including the risk assumed by the tribe in pursuing the development of the property.

III. If Congress Did so Intend, the Termination of the Trust Constituted a "Taking" Without Just Compensation in Violation of the Fifth Amendment of the United States Constitution.

If the 1980 Act is interpreted to divest 90% of the 1886 Mdewakanton Sioux of their interest in the 1886 lands, the Act results in a taking without just compensation, in violation of the Fifth Amendment of the United States Constitution. *United States v. Sioux Nation of Indians*, 448 U.S. 371, 100 S.Ct. 2716 (1980). In *Sioux Nation*, this Court reconciled two seemingly divergent lines of authority pertaining to actions of Congress impacting the property rights of Indian people. One line of authority, exemplified by the early case of *Lone Wolf v. Hitchcock,* 187 U.S. 553, 23 S.Ct. 216, 47 L.Ed. 299 (1903), recognized Congress's paramount power over the property of the Indians, express and implied, by reason of its exercise of guardianship over their interests, even where the Congressional action is not in accord with the strict letter of a treaty. The second line was exemplified by the more recent decision in *Shoshone Tribe v. United*

States, 299 U.S. 476, 57 S.Ct. 244, 81 L.Ed. 360 (1937). In that case, the Court conceded Congress's paramount power over Indian property, but holds, nonetheless, that "[t]he power does not extend so far as to enable the Government 'to give the tribal lands to others, or to appropriate them to its own purposes, without rendering, or assuming an obligation to render, just compensation.'" *Id.*, at 497, 57 S.Ct., at 252 (quoting *United States v. Creek Nation*, 295 U.S. 103, 110, 55 S.Ct. 681, 684, 79 L.Ed. 1331 (1935)).

As previously argued, the Federal Circuit attempts to fit Congress's action, in adopting the 1980 Act, in the former line of cases, involving the mere "management" of the property. The Federal Circuit characterizes the directions of Congress as mere "statutory use restrictions", rather than fiduciary responsibilities. The Federal Circuit also characterized this as a "change in the identity of the beneficiaries", and held that a change in the identity of the beneficiaries does not constitute a taking. As argued, to characterize the exclusion of 90% of the statutorily intended beneficiaries, and the inclusion of a number of beneficiaries who were not authorized by statute, as a "change in identity of the beneficiaries," especially in light of the statutory mandate that the beneficiaries be treated equally, is simply unreasonable. The Federal Circuit cites the case of *United States v. Jim*, 409 U.S. 80, 93 S.Ct. 261 (1972) to support the argument that Congress can "dilute the ownership" of a class of beneficiaries without committing an unconstitutional "taking." Again, to

argue that exclusion of 90% of the intended beneficiaries is a "dilution of ownership" simply defies logic. If the 1980 Act is interpreted as the Federal Circuit interpreted it, it resulted in a "taking" without compensation. The "taking" is especially onerous when one considers the fact the land has proven so valuable as a base for gaming operations, that the enrolled members of the Shakopee tribe, which purposely refused to admit 1886 Mdewakanton Sioux people who were not previously enrolled, to membership in the tribe, each receive a distribution of $400,000 per year from the tribal gaming operations.

CONCLUSION

The *Wolfchild* and *Zephier* Petitions for Writs of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Calendar No. 1178

96TH CONGRESS *2d Session* | SENATE | REPORT No. 96-1047

PROVIDING THAT CERTAIN LAND OF THE UNITED STATES SHALL BE HELD BY THE UNITED STATES IN TRUST FOR CERTAIN COMMUNITIES OF THE MDEWAKANTON SIOUX IN MINNESOTA

DECEMBER 1 (legislative day, NOVEMBER 20), 1980.
Order to be printed

MR. MELCHER, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany H.R. 7147]

The Select Committee on Indian Affairs, to which was referred the bill (H.R. 7147) to provide that certain land of the United States shall be held by the United States in trust for certain communities of the Mdewakanton Sioux in Minnesota, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

H.R. 7147 provides that three parcels of land totaling approximately 1,000 acres situated in the

State of Minnesota which were acquired by the United States for the use and benefit of the Mdewakanton Sioux Indians under three separate Acts of Congress in the late 1800's shall continue to be held by the United States but in trust for three separate Mdewakanton Sioux communities situated in that State.

The effect of H.R. 7147 would be to change the legal status of the ownership of the lands involved, which are now held by the United States under the Acts described above for the use of those Mdewakanton Sioux Indian individuals who resided in (or were en route to) the State of Minnesota on May 20, 1886, and for their descendants. Under the bill, as noted above, all right, title, and interest in such lands would be declared instead to be held by the United States in trust for three Minnesota Sioux tribal communities. The rights of individuals whom an interest has already been assigned are protected under the provision of Section 3 of the bill.

BACKGROUND AND NEED

After the Great Sioux Uprising of 1856 Congress enacted legislation in 1888, 1889, and 1890 authorizing the appropriation of funds to acquire lands for members of the Mdewakanton Sioux Tribe who did not participate in such uprising. These lands were acquired for the use of the members of the Mdewakanton Sioux who were living in Minnesota as of 1886 and their descendants.

After the enactment of the Indian Reorganization Act of 1934, additional lands were acquired in trust for the benefit of the three Mdewakanton groups who organized under that Act. In order to protect the rights of descendants of those Sioux, for whom the 1886 lands were acquired, the constitution and by-laws of the groups established two classes of members: all members of the community who were entitled to the benefits of the tribal lands acquired under the Reorganization Act and members who were descendants of the 1886 Mdewakanton and who had exclusive rights to the benefits of the 1886 lands.

This distinction has severely hampered the tribal efforts to achieve self-determination, as well as effectively barred the Mdewakanton from participation in several Federal programs. In the case of the Lower Sioux and Prairie Island Communities, the land acquired under the 1888, 1889, and 1890 Acts for individuals is interspersed among the land now held in trust for the communities. The result is a checkerboard pattern of land used that severely diminishes the effectiveness of overall land management programs and community development.

With respect to each of the three communities, much of the land that would be affected would be useful for residential or community purposes, which require long-term lease provisions with an encumberable document as loan security. However, such use is not now, possible because of the unusual ownership status of the land which, since it requires the Secretary of the Interior to assure the continuing

availability of the land for assignment to eligible beneficiaries of the three Acts, effectively prohibits the issuance of long-term leases on it. Further, the land assignments made to those Mdewakanton Sioux individuals eligible under the Acts are not encumberable documents that can be used in securing loans from commercial institutions. The change in the lands' status contemplated by H.R. 7147, to lands held in trust for the three communities, would allow more productive use of the land by eliminating these problems and would enable the communities involved to manage all of their lands more efficiently.

LEGISLATIVE HISTORY

H.R. 7147 was introduced by Representative Nolan of Minnesota and was favorably reported by the House Committee on Interior and Insular Affairs on September 26, 1980. The bill passed the House and was referred to the Senate Select Committee November 19, 1980. There is no comparable Senate bill.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, by a poll of its members on December 1, 1980, by unanimous vote recommends that the Senate pass H.R. 7147 without amendment.

COMMITTEE AMENDMENTS

There are no Committee amendments.

SECTION-BY-SECTION ANALYSIS

Section 1 provides that certain lands totaling approximately 1,000 acres situated in the State of Minnesota which were acquired by the United States under three separate Acts of Congress for the use or benefit of certain Mdewakanton Sioux Indians and their descendants are declared to hereafter be held by the United States in trust for three separate Sioux Indian communities. The purpose of this section is to change and clarify the legal status of the lands in question in order to enhance the beneficial use of the lands.

Section 2 provides that the Secretary of the Interior shall publish in the Federal Register a description of the lands involved and provides further that such lands shall be a part of the reservations of the communities for which they are held in trust.

Section 3 provides that nothing in this Act shall alter, or require the alteration, of any rights under any contract, lease, or assignment of such lands entered into or issued prior to enactment of this legislation this protects the rights of all persons having a present interest in the lands.

COST AND BUDGETARY CONSIDERATION

The cost estimate for H.R. 7147, as provided by the Congressional Budget Office, is outlined below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., December 1, 1980.

Hon. JOHN MELCHER,
Chairman Select Committee on Indian Affairs,
US Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974. the Congressional Budget Office has reviewed H R 7147, a bill to provide that certain land of the United States shall be held by the United States in trust for certain communities of the Mdewakanton Sioux in Minnesota as ordered reported by the Senate Select Committee on Indian Affairs, December 1, 1980.

The bill would change the legal status of certain parcels of land, currently owned by the United States, to that of land specifically held in trust for the three Sioux communities identified in the bill. This technical change in status is expected to facilitate community development on the reservations. Based on the review of this bill, it appears that no additional cost to the government would be incurred as a result of enactment of this legislation.

Sincerely,

ALICE M. RIVLIN, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 6 of rule XXVII of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill.

The Committee believes that the bill H.R. 7147 will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATION

The Executive Communication of the Department of the Interior dated November 19, 1979, transmitting departmental views on H.R. 7147 to the House of Representatives, is as follows:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 9, 1980.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: your request for our views on H.R. 7147, a bill "To provide that certain land, of the United States shall be held by the United States in trust for certain communities of the Mdewakanton Sioux in Minnesota."

We recommend the adoption of the enclosed amendment to H.R. 7147 in the nature of a substitute and the enactment of the bill as so amended.

H.R. 7147 would declare that all right, title, and interest of the United States in land in Minnesota held by the United States for the use of certain Mdewakanton Sioux Indians under the Acts of June 29 1888 (25 Stat.217), March 2, 1889 (25 Stat. 980) and August 19, 1890 (26 Stat. 336), shall be held by the United States in trust as follows:

(1) some 258.25 acres of land located in Scott County, all in township 115 north, range 22 west, would be held in trust for the Shakopee Mdewakanton Sioux Community of Minnesota;

(2) some 492.5 acres of land located in Redwood County all in township 112 north, range 35 west, would be held by the United States in trust for the Lower Sioux Indian Community of Minnesota; and

(3) some 120 acres of land located in Goodhue County in township 114 north, range 15west, would be held by the United States in trust for the Prairie Island Indian Community of Minnesota.

(4)

Land held in trust for each community under the bill would be a part of the reservation of such community. The bill would not affect any contract lease, or assignment with respect to the lands' involved which is in existence on the date of the enactment of the bill. We note that the bill fails to include in the description of the land located in Redwood County two 40-acre tracts in section 2 of township 112 north, range 35 west, which should be

so included – (1) the southwest quarter northeast quarter and (2) the northwest quarter southeast quarter.

In 1888, the Department of the Interior requested the appropriation of "$20,000 for support of the Mdewakanton Band of Sioux Indians in Minnesota." House Ex. Doc. 228, 50th Cong., 1st Sess. The requested provision was added as a floor amendment, proposed by Rep. MacDonald of Minnesota, to an Indian affairs appropriations bill. The sponsor stated that during a Sioux uprising in Minnesota during August 1862, "a few of the [Sioux] remained friendly to the whites and became their trusted allies and defenders and . . . did valuable service in protecting our people and their property, and in saving many lives. . . ." However, under the Act of February 16, 1863, all treaties with the four Sioux Bands involved were "abrogated and annulled, and all the lands, annuities, and claims previously accorded to said Indians were declared to be forfeited to the United States" because of the uprising. "I am almost ashamed to say it," the sponsor stated, "but the fact is that no exception was made, even in favor of these friendly Indians." Cong. Rec. 2976-2978 (50th Cong., 1st Sess.)

The resulting Act of June 29, 1888, included the provision as follows:

> "For the support of the full-blood Indians in Minnesota, belonging to the Mdewakanton Band of Sioux Indians, who have resided in

> said State since [May 20, 1886], and severed their tribal relations, twenty thousand dollars, to be expended by the Secretary of the Interior in the purchase, in such manner as in his judgment he may deem best, of agricultural implements, cattle, horses, and lands . . . " (25 Stat. at 228-229)

A similar provision was included in the Act of March 2, 1889 (25 Stat. 980). It provided for a $12,000 appropriation, added to the Indian beneficiaries those "who were then [May 20, 1886] engaged in removing to said State and have since resided therein," and specified that $10,000 could be used in the purchase of such lands and items as "may be deemed best in the case of each of these Indians or family thereof." It also provided that if the amounts appropriated under that Act or Act of June 29, 1888, were not expended within the fiscal year for which they were appropriated, they were to remain available for the purposes for which they were appropriated.

The Act of August 19, 1890, included the appropriation of 8,000 for the Minnesota Sioux, utilizing essentially the same language (26 Stat. at 349) as the 1889 Act except that the 1890 Act applied to "mixed blood" as well as full blood Indians and did not contain the provision making the funds available beyond the fiscal year.

The effect of H.R. 7147 would be to change the legal status of the ownership of the lands involved, which are now held by the United States under

the Acts described above for the use of those Mdewakanton Sioux Indian individuals who resided in (or were enroute to) the State of Minnesota on May 20, 1886, and for their descendants. Under the bill, as noted above all right title, and interest in such lands would be declared instead to be held by the United States in trust for three Minnesota Sioux tribal communities.

The Shakopee Mdewakanton Sioux Community is organized under the Indian Reorganization Act of 1934 (48 Stat. 984) and its governing body is the General Council of the members of the community. No lands are now held in trust by the United States for the community. The 258.25 acres which H.R. 7147 would declare held in trust for such community were acquired in three transactions in 1890 and 1891 at a total cost of $4,733. The land has a current value of approximately $774,750 ($3,000 per acre).

The Lower Sioux Indian Community is organized under the Indian Reorganization Act and governed by its Community Council. Some 872.5 acres of land are now held by the United States in trust for the community. The 572.5 acres (if the bill is amended to include the 80 acres erroneously omitted) that the bill would declare held in trust for such community were acquired in five transactions in 1889 at a total cost of $8,357.22. Their current value is approximately $572,500 ($1,000 per acre).

The Prairie Island Indian Community is also organized under the Indian Reorganization Act and is

governed by its Tribal Council. Some 414 acres of land are now held in trust by the United States for the community. The 120 acres which H.R. 7147 would declare held in trust for such community were acquired in a single transaction in 1889 at a cost of $1,560 and have a current value of approximately $180,000 ($1,500 per acre).

It should be noted the current membership of these three communities is not exclusively composed of the class of Mdewakanton Sioux individuals for whose benefit such land is now held by the United States. However, it should also be noted that the cost to the United States of lands purchased under the 1888,1889, and 1890 Acts was set off against the recovery by the Mdewakanton and Wahpakoota Bands of Sioux Indians in their suit against the United States (57 Ct. Cl. 357 (1922)), the beneficiaries of which included many individuals other than those for whom such land was held by the United States.

In the case of the Lower Sioux and Prairie Island Communities, the land acquired under the 1888,1889, and 1890 Acts for individuals is interspersed among the land now held in trust for the communities. The result is a checkerboard pattern of land used that severely diminishes the effectiveness of overall land management programs and community development.

With respect to each of the three communities, much of the land that would be affected would be useful for residential or community purposes, which

require long-term lease provisions with an encumberable document as loan security. However, such use is not now possible because of the unusual ownership status of the land which, since it requires the Secretary of the Interior to assure the continuing availability of the land for assignment to eligible beneficiaries of the three Acts, effectively prohibits the issuance of long-term leases on it. Further, the land assignments made to those Mdewakanton Sioux individuals eligible under the Acts are not encumberable documents that can be used in securing loans from commercial institutions. The change in the lands' status contemplated by H.R. 7147, to lands held in trust for the three communities, would allow more productive use of the land by eliminating these problems and would enable the communities involved to manage all of their lands more efficiently.

We suggest, in order to avoid the need to include in the bill a detailed land description that is both cumbersome and subject to inadvertent error, that the enclosed amendment to H.R. 7147 in the nature of a substitute be adopted. The amendment would provide for the publication in the Federal Register of the legal description of the land involved, a method by which any error may be more easily corrected. It also makes minor technical changes in the language of H.R. 7147.

The Office of Management and Budget has advised that there is no objection to the presentation

of this report from the standpoint of the administration's program.

THOMAS W. FREDERICK,
Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with subsection (7) of rule XXVII of the Standing Rules of the Senate, the Committee notes that there are no changes in existing law.

APPENDIX B

96TH CONGRESS *2d Session* | HOUSE OF REPRESENTATIVES | REPORT No. 96-1409

PROVIDING THAT CERTAIN LAND OF THE UNITED STATES SHALL BE HELD BY THE UNITED STATES IN TRUST FOR CERTAIN COMMUNITIES OF THE MDEWAKANTON SIOUX IN MINNESOTA

SEPTEMBER 26, 1980 – Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. UDALL, from the Committee on Interior and Insular Affairs submitted the following

REPORT

[To accompany H.R. 7147]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 7147) to provide that certain land of the United States shall be held by the United States in trust for certain communities of the Mdewakanton Sioux in Minnesota, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 3, strike all after the enacting clause and insert the following:

> That all right, title, and interest of the United States in those lands (including any structures or other improvements of the United States on such lands) which were acquired and are now held by the United States for the use or benefit of certain Mdewakanton Sioux Indians under the Act of June 29, 1888 (25 Stat. 217); The Act of March 2, 1889 (25 Stat. 980); and the Act of August 19, 1890 (26 Stat. 336), are hereby declared to hereafter to be held by the United States –
>
> > (1) with respect to the some 258.25 acres of such lands located within Scott County, Minnesota, in trust for the Shakopee Mdewakanton Sioux Community of Minnesota; and
> >
> > (2) with respect to the some 572.5 acres of such lands located within Redwood County, Minnesota, in trust for the Lower Sioux Indian Community of Minnesota; and
> >
> > (3) with respect to the some 120 acres of such lands located in Goodhue County, Minnesota, in trust for the Prairie Island Indian Community of Minnesota.

SEC. 2. The Secretary of the Interior shall cause a notice to be published in the Federal Register describing the lands transferred by section 1 of this Act. The lands so transferred are hereby declared to be a part of the reservations of the respective Indian communities for which they are held in trust by the United States.

SEC. 3. Nothing in this Act shall (1) alter, or require the alteration, of any rights under any contract, lease, or assignment entered into or issued prior to enactment of this Act, or (2) restrict the authorities of the Secretary of the Interior under or with respect to any such contract, lease, or assignment.

PURPOSE

The purpose of H.R. 7147, introduced by Mr. Nolan, is to provide that certain lands now held by the United States for the benefit of certain Mdewakanton Sioux Communities of Minnesota.

BACKGROUND

H.R. 7147 provides that the title of the United States to certain lands held for the benefit of certain Mdewakanton Sioux or their descendants will be held in trust for the three existing tribal entities of the Mdewakanton Sioux.

After the Great Sioux Uprising of 1856, Congress enacted legislation in 1888, 1889, and 1890, authorizing the appropriation of funds to acquire lands for

members of the Mdewakanton Sioux tribe who did not participate in such uprising. These lands were acquired for the use of the members of the Mdewakanton Sioux who were living in Minnesota as of 1886 and their descendants.

After the enactment of the Indian Reorganization Act of 1934, additional lands were acquired in trust for the benefit of the three Mdewakanton groups, who organized under that Act. In order to protect the rights of descendants of those Sioux for whom the 1886 lands were acquired, the constitution and bylaws of the groups established two classes of members: all members of the community who were entitled to the benefits of the tribal lands acquired under the Reorganization Act and members who were descendants of the 1886 Mdewakanton and who had exclusive rights to the benefits of the 1886 lands.

This distinction has severely hampered the tribal efforts to achieve self-determination, as well as effectively barred the Mdewakanton from participation in several Federal programs.

HR 7147 would eliminate this distinction by providing that the 1886 lands will be held in trust by the United States for the benefit of the three Mdewakanton communities.

APPENDIX C

LIST OF PLAINTIFFS

Marvel Jean DuMarce et al.

DuMarce	Surname	First Name	Middle Name
1	DuMarce	Marvel	Jean
2	Bursheim	Donna	Faye
3	Selvaqe Jr.	Michael	Ira
4	LaBelle	Paige	Reriae
5	Nicolai a.k.a. Nicoloi	Valencia a.k.a. Velencia	Anita
6	Selvage	Ira	Joseph Murphy
7	Selvaqe	Tilrner	Kenneth
8	Selvaqe	Shalaine	Paris Marie
9	Selvaqe	Sabre	Kenneth
10	Selvaqe	Saden	John
11	Farmer	Stevie	Dawn
12	Shepherd	Austin	Blaine
13	Quinn	Tayonna	Felicia Lashae
14	DuMarce	Jarrod	Kenneth
15	Bursheim	Whitney	DeVon
16	White	Kyan	James
17	Farmer	Sara	Louise
18	Farmer	Janiya	Faye
19	Farmer	Gabrielle	Joy
20	Bursheim	Donita	Mae
21	Goodsell Sr.	Jared	Marshall

22	Marlow	Aliyah	Jean
23	Goodsell Jr.	Jared	Marshall
24	Goodsell	Gracie	Lydia
25	Goodsell	Marshall	Jared
26	Goodsell	Jace	Marshall
27	Bursheim Jr.	Kenneth	Duwayne
28	Bursheim	Julian	John
29	Bursheim III	Kenneth	Duwayne
30	Bursheim	Beverly	Jean
31	Bursheim	Keith	Benjamin
32	Bursheim	DeVon	Belle
33	Bursheim	Bailyn	John
34	BraveBull	Belle	Sheldon
35	BraveBull	Corrine	Faith
36	DuMarce	Geraldine	Arlene
37	Marks	Lori	Kim
38	Cochran	Robyn	Rose
39	Jones	R.	Hunter Sage
40	Jackson	Ari	Lashey Selvage
41	Selvage	Aaliyah	Micheala
42	Selvage	Serena	Maxine
43	Goodsell	Teagan	Anthony
44	Bursheim	Jaia	Marie

Vivian Cordelia Youngbear, et al.

Youngbear	Surname	First Name	Middle Name
1	Youngbear	Vivian	Cordelia
2	Bullhead	Fern	Marie
3	Bullhead	Frank	Louis
4	Bull Head	Kenneth	Jacob
5	Bull Head	Rayden	Kade
6	Bull Head	Renzo	Daz
7	Bull Head	Bethany	Jade
8	Bull Head	Meleah	Chante
9	Crow Feather	Carter	Wayne
10	Bull Head	Chaston	Wade
11	Bullhead	Catherine	Cecelia
12	Still Day	Victor	Clarence
13	Stillday	Zyon	Winter
14	StillDay	Christopher	James
15	Still Day	Rosa	Leigh
16	StillDay	Whitley	Jo
17	StillDay	Whitney	Marie
18	Bullhead	Valerie	Margaret
19	Tortalita	Xavier	Quinn
20	Tortalita	Coraetta	Marcelina
21	Tortalita	Cecelia	Marie
22	Young Bear	Dorine	Rae
23	DragsWolf	Noble	James
24	Young Bear	Trivian	Ruth

25	Rodriguez	Lynnell	Francine
26	Nault	Christian	Sage
27	Young Bear	Marva	Ranae
28	Three Stars III	Harry	Paul
29	Three Stars	Ethan	Cole
30	Young Bear	Lynette	Laverne
31	Abbott Half Red	Frank	Coulton
32	Abbott Half Red	Talburt	Joseph
33	Young Bear	Maryetta	Joann
34	Young Bear	Monica	Faith
35	Young Bear	Angela	Rose
36	Garreau	Eva	Rose
37	Garreau	Justin	William
38	Garreau	Jasper	David
39	Young Bear III	David	Kenneth
40	Bull Head	Jazz	Talen
41	Still Day	Ginnivieve	London
42	Lone Bear	Benjamin	Gavyn
43	Lone Bear	Lennox	Marshall
44	Bull Head	Tyler	Blaze